

REFERENCE TITLE: cold case; jurisdiction; victim's rights

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1278

Introduced by
Senator Huppenthal

AN ACT

AMENDING SECTIONS 11-441, 11-532 AND 13-105, ARIZONA REVISED STATUTES;
AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-4440; RELATING TO COLD CASE HOMICIDES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-441, Arizona Revised Statutes, is amended to
3 read:

4 11-441. Powers and duties

5 A. The sheriff shall:

6 1. Preserve the peace.

7 2. Arrest and take before the nearest magistrate for examination all
8 persons who attempt to commit or who have committed a public offense.

9 3. Prevent and suppress all affrays, breaches of the peace, riots and
10 insurrections which may come to the knowledge of the sheriff.

11 4. Attend all courts, except justice and municipal courts, when an
12 element of danger is anticipated and attendance is requested by the presiding
13 judge, and obey lawful orders and directions issued by the judge.

14 5. Take charge of and keep the county jail, including a county jail
15 under the jurisdiction of a county jail district, and the prisoners in the
16 county jail.

17 6. Endorse upon all process and notices the year, month, day, hour and
18 minute of reception, and issue to the person delivering it, on payment of
19 fees, a certificate showing the names of the parties, title of paper and time
20 of reception.

21 7. Serve process and notices in the manner prescribed by law and
22 certify under the sheriff's hand upon the process or notices the manner and
23 time of service, or if the sheriff fails to make service, the reasons for
24 failure, and return them without delay. When returnable to another county,
25 the sheriff may enclose such process or notices in an envelope, addressed to
26 the officer from whom received, and deposit it postage prepaid in the post
27 office. The return of the sheriff is prima facie evidence of the facts
28 stated in the return.

29 8. Secure, as soon as possible, the home of a deceased person located
30 outside the boundaries of an incorporated city or town if the sheriff is
31 unable to determine or locate the heirs or executor of the deceased person.

32 B. The sheriff may in the execution of the duties prescribed in
33 subsection A, paragraphs 1 through 4 command the aid of as many inhabitants
34 of the county as the sheriff deems necessary.

35 C. The sheriff shall conduct or coordinate within the county search or
36 rescue operations involving the life or health of any person, or may assist
37 in such operations in another county at the request of that county's sheriff,
38 and may request assistance from any persons or agencies in the fulfillment of
39 duties under this subsection.

40 D. The sheriff, in the execution of the duties prescribed in this
41 section, may request the aid of volunteer posse and reserve organizations
42 located in the county.

43 E. The sheriff may assist in the execution of the duties prescribed in
44 this section in another county at the request of that county's sheriff.

1 F. The sheriff may require any prisoner who is on work release to
2 reimburse the county for reasonable expenses incurred in connection with the
3 release.

4 G. The board of supervisors of a county bordering the Republic of
5 Mexico may adopt an ordinance pursuant to chapter 2 of this title allowing
6 the sheriff to prevent the entry from this state into the republic of Mexico
7 at the border by any resident of this state who is under eighteen years of
8 age if the minor is unaccompanied by a parent or guardian or does not have
9 written consent for entry from a parent or guardian. The authority of the
10 sheriff is only to prevent entry and not to otherwise detain the minor. This
11 subsection shall not be construed to limit the authority of the sheriff
12 pursuant to any other law. A county is not civilly or criminally liable for
13 not adopting an ordinance pursuant to this subsection.

14 H. NOTWITHSTANDING ANY OTHER LAW, ON A REQUEST OF A VICTIM PURSUANT TO
15 SECTION 13-4440 AND WITH THE CONSENT OF THE COUNTY ATTORNEY, A SHERIFF MAY
16 INVESTIGATE A MATTER THAT IS A COLD CASE AS DEFINED IN SECTION 13-105 IN ANY
17 COUNTY OF THIS STATE. ON THE REQUEST OF ANOTHER SHERIFF IN THIS STATE, A
18 SHERIFF SHALL PROVIDE A COPY, IF POSSIBLE, OF ALL RECORDS AND EVIDENCE THAT
19 THE SHERIFF MAINTAINS ON A COLD CASE AS DEFINED IN SECTION 13-105.

20 Sec. 2. Section 11-532, Arizona Revised Statutes, is amended to read:

21 11-532. Powers and duties

22 A. The county attorney is the public prosecutor of the county and
23 shall:

24 1. Attend the superior and other courts within the county and conduct,
25 on behalf of the state, all prosecutions for public offenses.

26 2. Institute proceedings before magistrates for the arrest of persons
27 charged with or reasonably suspected of public offenses when the county
28 attorney has information that the offenses have been committed.

29 3. When not engaged in criminal proceedings in the superior court,
30 attend upon the magistrates in cases of arrest when required by them, and
31 attend before and give advice to the grand jury.

32 4. Draw indictments and informations, defend actions brought against
33 the county and prosecute actions to recover recognizances forfeited in courts
34 of record and actions for recovery of debts, fines, penalties and forfeitures
35 accruing to the state or county.

36 5. Deliver receipts for monies or property received in the county
37 attorney's official capacity and file duplicate receipts with the clerk of
38 the board.

39 6. On the first Monday of January, April, July and October in each
40 year, file with the board of supervisors an account, verified by oath, of all
41 monies received in the county attorney's official capacity during the
42 preceding three months, and at the same time pay it to the county treasurer.

43 7. When required, give a written opinion to county officers on matters
44 relating to the duties of their offices.

1 8. Keep a register of official business, and enter therein every
2 action prosecuted, criminal or civil, and of the proceedings therein.

3 9. Act as the legal advisor to the board of supervisors, attend its
4 meetings and oppose claims against the county which the county attorney deems
5 unjust or illegal.

6 10. Act as attorney for school districts except as provided in section
7 15-343, or except in any lawsuits involving a conflict of interest with other
8 county offices at which time the attorney general may represent the school
9 district.

10 11. Act as attorney for the community college district except as
11 provided in section 15-1448 or except in any lawsuits involving a conflict of
12 interest with other county offices, at which time the attorney general may
13 represent the community college district.

14 12. Defend all locally valued and assessed property tax appeals as
15 provided in section 42-16208.

16 B. Upon receipt of an appellant's brief in a criminal appeal, the
17 county attorney shall furnish the attorney general with a true statement of
18 the facts in the case, together with the available authorities and citations
19 that are responsive to the assignments or specifications of error.

20 C. The county attorney may represent a school district governing board
21 member against whom an action is brought in the board member's individual
22 capacity until such time as it is established as a matter of law that the
23 alleged activity or events which form the basis of the complaint were not
24 performed, or not directed to be performed, within the scope or course of the
25 member's duties.

26 D. Notwithstanding ~~the provisions of~~ article 12 of this chapter, in
27 connection with the investigation or prosecution of any matter involving the
28 death of a person, the county attorney may request that the medical examiner,
29 for the county in which the prosecution will take place, conduct the medical
30 examination.

31 E. NOTWITHSTANDING ANY OTHER LAW, ON THE REQUEST OF A VICTIM PURSUANT
32 TO SECTION 13-4440 AND WITH THE CONSENT OF THE SHERIFF, A COUNTY ATTORNEY MAY
33 INVESTIGATE A MATTER THAT IS A COLD CASE AS DEFINED IN SECTION 13-105 IN ANY
34 COUNTY OF THIS STATE. ON THE REQUEST OF ANOTHER COUNTY ATTORNEY IN THIS
35 STATE, A COUNTY ATTORNEY SHALL PROVIDE A COPY, IF POSSIBLE, OF ALL RECORDS
36 AND EVIDENCE THAT THE COUNTY ATTORNEY MAINTAINS ON A COLD CASE AS DEFINED IN
37 SECTION 13-105.

38 Sec. 3. Section 13-105, Arizona Revised Statutes, is amended to read:

39 13-105. Definitions

40 In this title, unless the context otherwise requires:

41 1. "Act" means a bodily movement.

42 2. "Benefit" means anything of value or advantage, present or
43 prospective.

44 3. "Calendar year" means three hundred sixty-five days' actual time
45 served without release, suspension or commutation of sentence, probation,

1 pardon or parole, work furlough or release from confinement on any other
2 basis.

3 4. "COLD CASE" MEANS A HOMICIDE THAT REMAINS UNSOLVED FOR ONE YEAR OR
4 MORE AFTER BEING REPORTED TO A LAW ENFORCEMENT AGENCY AND THAT HAS NO VIABLE
5 AND UNEXPLORED INVESTIGATORY LEADS.

6 ~~4.~~ 5. "Community supervision" means that portion of a felony sentence
7 imposed by the court pursuant to section 13-603, subsection I and served in
8 the community after completing a period of imprisonment or served in prison
9 in accordance with section 41-1604.07.

10 ~~5.~~ 6. "Conduct" means an act or omission and its accompanying
11 culpable mental state.

12 ~~6.~~ 7. "Crime" means a misdemeanor or a felony.

13 ~~7.~~ 8. "Criminal street gang" means an ongoing formal or informal
14 association of persons ~~whose~~ IN WHICH members or associates individually or
15 collectively engage in the commission, attempted commission, facilitation or
16 solicitation of any felony act and that has at least one individual who is a
17 criminal street gang member.

18 ~~8.~~ 9. "Criminal street gang member" means an individual to whom two
19 of the following seven criteria that indicate criminal street gang membership
20 apply:

- 21 (a) Self-proclamation.
- 22 (b) Witness testimony or official statement.
- 23 (c) Written or electronic correspondence.
- 24 (d) Paraphernalia or photographs.
- 25 (e) Tattoos.
- 26 (f) Clothing or colors.
- 27 (g) Any other indicia of street gang membership.

28 ~~9.~~ 10. "Culpable mental state" means intentionally, knowingly,
29 recklessly or with criminal negligence as those terms are thusly defined:

30 (a) "Intentionally" or "with the intent to" means, with respect to a
31 result or to conduct described by a statute defining an offense, that a
32 person's objective is to cause that result or to engage in that conduct.

33 (b) "Knowingly" means, with respect to conduct or to a circumstance
34 described by a statute defining an offense, that a person is aware or
35 believes that ~~his or her~~ THE PERSON'S conduct is of that nature or that the
36 circumstance exists. It does not require any knowledge of the unlawfulness
37 of the act or omission.

38 (c) "Recklessly" means, with respect to a result or to a circumstance
39 described by a statute defining an offense, that a person is aware of and
40 consciously disregards a substantial and unjustifiable risk that the result
41 will occur or that the circumstance exists. The risk must be of such nature
42 and degree that disregard of such risk constitutes a gross deviation from the
43 standard of conduct that a reasonable person would observe in the
44 situation. A person who creates such a risk but WHO is unaware of such risk

1 solely by reason of voluntary intoxication also acts recklessly with respect
2 to such risk.

3 (d) "Criminal negligence" means, with respect to a result or to a
4 circumstance described by a statute defining an offense, that a person fails
5 to perceive a substantial and unjustifiable risk that the result will occur
6 or that the circumstance exists. The risk must be of such nature and degree
7 that the failure to perceive it constitutes a gross deviation from the
8 standard of care that a reasonable person would observe in the situation.

9 ~~10-~~ 11. "Dangerous drug" means dangerous drug as defined ~~by~~ IN section
10 13-3401.

11 ~~11-~~ 12. "Dangerous instrument" means anything that under the
12 circumstances in which it is used, attempted to be used or threatened to be
13 used is readily capable of causing death or serious physical injury.

14 ~~12-~~ 13. "Deadly physical force" means force which is used with the
15 purpose of causing death or serious physical injury or in the manner of its
16 use or intended use is capable of creating a substantial risk of causing
17 death or serious physical injury.

18 ~~13-~~ 14. "Deadly weapon" means anything designed for lethal use,
19 including a firearm.

20 ~~14-~~ 15. "Economic loss" means any loss incurred by a person as a
21 result of the commission of an offense. Economic loss includes lost
22 interest, lost earnings and other losses which would not have been incurred
23 but for the offense. Economic loss does not include losses incurred by the
24 convicted person, damages for pain and suffering, punitive damages or
25 consequential damages.

26 ~~15-~~ 16. "Enterprise" includes any corporation, association, labor
27 union or other legal entity.

28 ~~16-~~ 17. "Felony" means an offense for which a sentence to a term of
29 imprisonment in the custody of the state department of corrections is
30 authorized by any law of this state.

31 ~~17-~~ 18. "Firearm" means any loaded or unloaded handgun, pistol,
32 revolver, rifle, shotgun or other weapon which will or is designed to or may
33 readily be converted to expel a projectile by the action of expanding gases,
34 except that it does not include a firearm in permanently inoperable
35 condition.

36 ~~18-~~ 19. "Government" means the state, any political subdivision of the
37 state or any department, agency, board, commission, institution or
38 governmental instrumentality of or within the state or political subdivision.

39 ~~19-~~ 20. "Government function" means any activity which a public
40 servant is legally authorized to undertake on behalf of a government.

41 ~~20-~~ 21. "Intoxication" means any mental or physical incapacity
42 resulting from use of drugs, toxic vapors or intoxicating liquors.

43 ~~21-~~ 22. "Misdemeanor" means an offense for which a sentence to a term
44 of imprisonment other than to the custody of the state department of
45 corrections is authorized by any law of this state.

~~22.~~ 23. "Narcotic drug" means narcotic drugs as defined ~~by~~ IN section 13-3401.

~~23.~~ 24. "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state.

~~24.~~ 25. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

~~25.~~ 26. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests.

~~26.~~ 27. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

~~27.~~ 28. "Petty offense" means an offense for which a sentence of a fine only is authorized by law.

~~28.~~ 29. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

~~29.~~ 30. "Physical injury" means the impairment of physical condition.

~~30.~~ 31. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.

~~31.~~ 32. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.

~~32.~~ 33. "Property" means anything of value, tangible or intangible.

~~33.~~ 34. "Public servant":

(a) Means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function.

(b) Does not include jurors or witnesses.

(c) Includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

~~34.~~ 35. "Serious physical injury" includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

~~35.~~ 36. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

1 ~~36.~~ 37. "Vehicle" means a device in, upon or by which any person or
2 property is, may be or could have been transported or drawn upon a highway,
3 waterway or airway, excepting devices moved by human power or used
4 exclusively upon stationary rails or tracks.

5 ~~37.~~ 38. "Voluntary act" means a bodily movement performed consciously
6 and as a result of effort and determination.

7 ~~38.~~ 39. "Voluntary intoxication" means intoxication caused by the
8 knowing use of drugs, toxic vapors or intoxicating liquors by a person, the
9 tendency of which to cause intoxication the person knows or ought to know,
10 unless the person introduces them pursuant to medical advice or under such
11 duress as would afford a defense to an offense.

12 Sec. 4. Title 13, chapter 40, Arizona Revised Statutes, is amended by
13 adding section 13-4440, to read:

14 13-4440. Right to request change of jurisdiction; cold case
15 investigation

16 A. A VICTIM HAS THE RIGHT TO REQUEST THE COUNTY ATTORNEY AND SHERIFF
17 OF A COUNTY IN THIS STATE TO INVESTIGATE A COLD CASE THAT OCCURRED IN ANY
18 COUNTY OF THIS STATE IF THE VICTIM CURRENTLY MAINTAINS A RESIDENCE IN THE
19 COUNTY IN WHICH THE REQUEST IS MADE.

20 B. A VICTIM'S REQUEST PURSUANT TO THIS SECTION DOES NOT PROHIBIT A
21 COUNTY ATTORNEY OR SHERIFF FROM CONTINUING ITS INVESTIGATION OR RELIEVE A
22 COUNTY ATTORNEY OR SHERIFF OF ANY OTHER DUTY REQUIRED PURSUANT TO THIS
23 CHAPTER.

24 C. A COUNTY ATTORNEY AND A SHERIFF HAVE THE SOLE DISCRETION TO ACCEPT
25 OR DENY A REQUEST MADE PURSUANT TO THIS SECTION.